



The rights are in the details
PSDP's ACAA NPRM comment
March 2020



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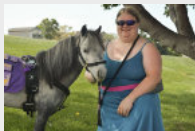


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§0. Introduction and table of contents

RE: US Department of Transportation docket number DOT– OST–2018–0068

To the Office of the Secretary (OST), U.S. Department of Transportation (DOT):

We are grateful DOT has heard and incorporated many of our earlier arguments to formulate the present regulation proposal. We recognize this is a monumental task.

DOT's challenge is to finalize a set of regulations that embody the nondiscrimination mandate of the Air Carrier Access Act (ACAA) while accounting for practical considerations in ways that do not corrupt that mandate. In this comment, we (Psychiatric Service Dog Partners) advise DOT in finding this balance.

In some places, this means recognizing and pulling back from macro-affronts to disability rights. In many other instances, only micro-changes are needed, yet the rights are in the details and must not be lost.

Thank you for honoring our expertise and our experience during and after the negotiated rulemaking in 2016 (Reg Neg). We intend our persistence to help DOT bear in mind the very real individuals whose ability to travel is enabled or disabled by the wisdom DOT executes.

Below, our hyperlinked table of contents provides direction. Our comment follows the order of DOT's presentation in the notice of proposed rulemaking (NPRM).

Wholeheartedly,



Bradley W. Morris, MA, CPhil
on behalf of PSDP's Board of Directors and
ACAA Advisory Committee



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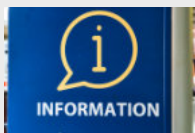
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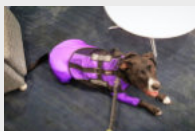


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[§2. Breed or type restrictions would unduly harm disabled people](#)



§1. Service animals include dogs, but miniature horses should have exceptional access

Earlier, we argued for our ideal when it comes to this topic. For more information, see p. 8–11 of our attached Handbook ("The path to responsible air travel governance: A recent history of service animal recommendations", May 2019).

We do have two factors to note, positive and negative.

First, we appreciate that which species are allowed is not as open-ended in the NPRM as it is in DOT's current regulations. The NPRM's more restrictive nature is closer to the species allowed by the Department of Justice (DOJ) regulations implementing the Americans with Disabilities Act (ADA).

Second, we prefer that DOT not be more restrictive than DOJ when it comes to the allowed species. In particular, we reiterate that exceptional access makes sense for miniature horse service animals with an individualized assessment. As our Director of Government Relations clarified during the Negotiated Rulemaking on p. 3 of "Service Animal Advocate Positions and Reasoning" (September 15, 2016),

"Miniature horses are given exceptional access under [DOJ] regulations because their development as service animals was authoritatively organized and they have several specific features that make them a better choice or even the only choice for some persons with disabilities (much longer working life, allergen avoidance, religious conformance, soundness of structure for mobility work)."

<https://www.transportation.gov/office-general-counsel/negotiated-regulations/service-animals—advocate-position-and-reasoning>



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Dogs as service animals, with miniature horse exceptional access



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Our 2016 argument shows that miniature horses stand out as having special properties relevant to filling a niche for prospective and existing service animal users. This exempts them from a general argument about the lack of need for multiple species to act as service animals.

The remaining arguments against access with unusual species (animals that are not dogs) as service animals are mainly the following two. (A) The appearance of unusual species undermines the legitimacy the public ascribes to the majority of service animals, thus undercutting access for everyone who needs to use a service animal. (B) Allowing unusual species simply enables individuals to bring a menagerie of pets onboard.

Each of these arguments is strong overall, but is especially weak against access for miniature horse service animals. The reasons for this weakness when applied to mini-horses are linked, but can be considered separately.

In response to (A): Well-trained mini-horse service animals are more oddities of cuteness and public affection than of negative shock and approbation. We do not hear anyone in our community worry that access for miniature horse service animals significantly undermines access for service dogs, while there is plenty of worry in this regard about other species.

There is no more worry about service miniature horses undermining service dog access than there is about small service dogs doing so. Of course, there are similarly powerful arguments as to why small service dogs are necessary. See "Service Dogs of Unusual Sizes" by Dr. Veronica Morris and Bradley Morris on p. 12–15 of the Summer 2019 edition of "The Canine Professional Journal".

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In response to (B), that allowing unusual species simply enables individuals to bring a menagerie of pets onboard: Miniature horses are not at all common as pets, nor is there reason to think they would become so.

Generally, a person is unable to and does not acquire a miniature horse without deliberate planning. Further, if someone is to travel with a large animal with needs like that of a mini-horse, the training and planning that travel requires carries with it greater assurances of handler responsibility than do the tag-along possibilities of many pets.

There is no good reason to believe that allowing access with service miniature horses would translate to any increase in the public trying to bring an assortment of pets with them as service animals. For this and the reasons above, we support access for disabled individuals who have service miniature horses.

"As a disabled human paired with a miniature horse for mobility assistance, I find my air travel almost eliminated, a sad change from my younger years traveling with my airline employed father."

—response 216, from the May 22, 2018 "Flight Access Survey Report" on p. 162 of our Handbook

DOT's stated reason for no longer allowing access with service miniature horses is the belief they would not fit on aircraft. However, many have and do fit.

Many miniature horses are comparable in size to a St. Bernard. Many can also fold their legs and lie down more easily than their larger equine counterparts. Some fly in first class for more room.

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DOT's current regulations already allow airlines to consider an animal's size and weight in relation to the planned aircraft when deciding whether to restrict access on a case-by-case basis. Theoretical space concerns must not prohibit practically achievable access.

Finally, we must reiterate and emphasize that DOT must not discriminate based on religion. It is clear that many Muslims have religious reasons not to use a service dog, yet those reasons do not apply to service miniature horses. DOT may not prohibit the use of service miniature horses while claiming any ignorance that this would target individuals of a particular faith.

It comes down to this. **We have stories of successful mini-horse air travel with disabled people who need these service animals.** We are not overrun by tales of mini-horse air travel suddenly being impossible—as the opposing view holder seems merely to imagine. So **it seems on the better side of reason to continue to allow access with service miniature horses.**



• allergen avoidance
• religious conformance
• longer working life
• hardness for mobility work

Keep letting
mini-horse
service animal
teams fly

• Their access does not significantly worsen access for service dog users.
• Fraud is highly unlikely with mini-horses.

Pure theory should not stop access that works in practice.

www.psych.dog





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§2. Breed or type restrictions would unduly harm disabled people

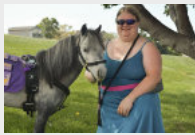
"The breed restrictions basically make it impossible for me to fly."

—response 7, from the May 7, 2019 "Recent community feedback" on p. 294 of our Handbook

On p. 20 of its 2019 "Final Statement of Enforcement Priorities Regarding Service Animals", DOT wrote:

"The Department's disability regulation allows airlines to deny transport to an animal if, among other things, it poses a direct threat to the health or safety of others. However, the Department is not aware of and has not been presented with evidence supporting the assertion that an animal poses a direct threat simply because of its breed."

<https://www.regulations.gov/document?D=DOT-OST-2018-0067-0099>



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Breed bans usually aim at breeds preferred by many veterans and veteran-oriented service dog programs. These bans tend to rely on stereotypes and worst-case scenarios. For example, Delta has used one horrible incident in 2017 for much subsequent press, justifying its breed ban as if the unusual event were representative. See PSDP's webpage, "Delta pit bull service animal ban".

<https://www.psychdogpartners.org/board-of-directors/board-activities/advocacy/delta-pit-bull-service-animal-ban>

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restrictions would
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Yet dogs of targeted breeds are successfully used in great numbers as service animals. This reality should make us question the breed-determinism that acts as a convenient scapegoat. The successful use of many such targeted breeds reinforces the argument that when aggression occurs, it is a likely an issue involving deficiencies in both service dog team training and in-person airline accountability.

A dog of any breed can be aggressive, including the most prototypical of service dog breeds, such as Golden Retrievers, German Shepherds, and Labrador Retrievers. Many individuals of this last breed are even colloquially assumed to be "pit bulls", due to their blocky heads or thick necks. Which breed gets demonized has actually changed over the decades.

We urge DOT to maintain its good reasoning, consistent with DOJ's, and not get swept up in any blunderous, scapegoating winds of the moment. DOT should hold fast against the stereotyping pull of breed bans as some panacea or inscrutable need.

Further, our community needs practical assurances from DOT that they will be able to fly with their service dogs, regardless of breed. It is easy for large corporations to further marginalize people with disabilities. We don't always have the power or wherewithal to fight for our rights in the face of systematic discrimination—and the ACAA provides no right of private action—so we must rely heavily on agencies like DOT to actively push back the advance of injustice on our behalf.

We encourage DOT to act within its power to prevent retaliatory action by an airline against an employee for acting in accordance with DOT regulations or guidance—and similarly, to encourage airlines to support their employees when they are in the right.

§2.

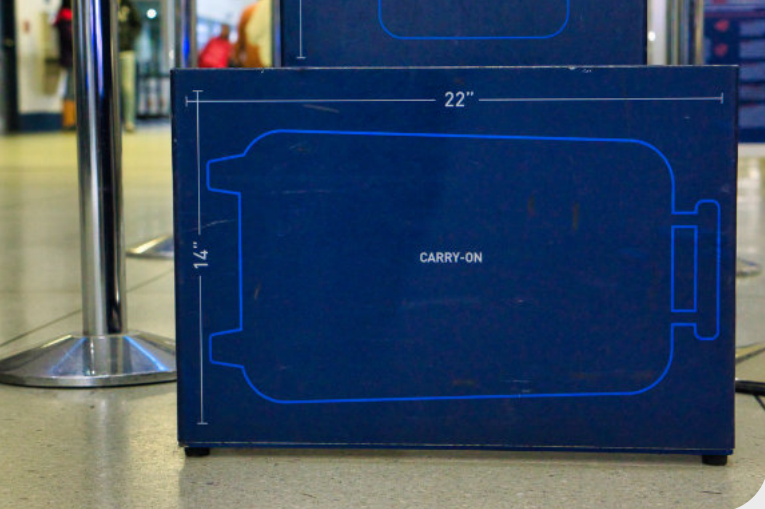
Breed or type
restrictions would
unduly harm
disabled people



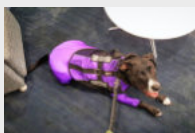
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We realize this encouragement may need to be in the form of nudging commentary, rather than regulation or guidance DOT does not believe to be under its authority. However, it is much better for DOT to nudge the culture and prompt discussions, rather than absolve itself of any responsibility in this arena by remaining silent on the topic. DOT may be the only party airlines will listen to on this front, since our Negotiated Rulemaking pledges to support airlines acting appropriately have not had a significant impact.



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§3. It's appropriate to take practical measures for emotional support animal users

Earlier, we argued for our ideal when it comes to this topic. For more information, see both p. 11–16 of our attached Handbook ("The path to responsible air travel governance: A recent history of service animal recommendations", May 2019) and p. 6–11 in "Service Animal Advocate Positions and Reasoning" (September 15, 2016).

<https://www.transportation.gov/office-general-counsel/negotiated-regulations/service-animals—advocate-position-and-reasoning>

Our main concern if access with ESAs goes away is that ESA users are given sufficient notice and time to train a suitable animal as a service animal. DOT should ensure *at least* one year from any announcement of planned ESA exclusion to the time at which ESAs will not be allowed.

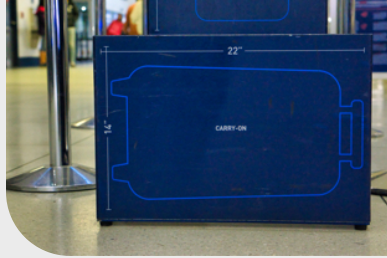
"I have a service dog. I'm very worried about esas. Those animals don't have training and are most likely go [sic] go after my dog or do something to give service dogs a bad rep. The general public doesn't understand the difference."

—response 11, from the May 22, 2018 "Flight Access Survey Report" on p. 117 of our Handbook

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"I occasionally meet people who tell me they fly their dog as an ESA. When I mention needing to be disabled, they have no idea that is a requirement [sic] and argue it's not, that all they need is the letter. Set up a questionnaire where people have to answer they are disabled without prompting, and you will eliminate many of the people flying their pets as something else."

—response 15, from the May 22, 2018 "Flight Access Survey Report" on p. 118 of our Handbook

"I think we need to crack down on the amount of untrained animals. How to do that I'm not sure but every animal, Service Dog or ESA, and person should be safe."

—response 175, from the May 22, 2018 "Flight Access Survey Report" on p. 153 of our Handbook

"ESA should be in crate the entire time."

—response 183, from the May 22, 2018 "Flight Access Survey Report" on p. 155 of our Handbook



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§4. Psychiatric service animal users should never face special discrimination

"Psychiatric issues carry a lot of stigma and you never know who you're dealing with so it's not something I advertise in public with people I don't know. To have to do that simply because my disability is psychiatric instead of physical, even though I use a task trained service dog with thousands of hours of training just like someone using a guide dog or mobility service dog is discriminatory. Plain and simple."

—response 11, from the December 11, 2016 "ACAA Third-Party Documentation Requirements: Survey of Psychiatric-Disability-Mitigating Animal Users" on p. 63 of our Handbook

Clearly, we are grateful and think it is entirely appropriate that DOT's NPRM proposes to treat psychiatric service animal users as any other service animal user. It has been a decade since our exasperated community and allies have fought to right the wrong of the regulatory discrimination.

We face, perhaps, a new day. We eagerly anticipate it will be a brighter day, yet we are not so naïve as to assume the dark corners will be seen without individuals holding candles to them. And so we must here again hold light to one of the darker corners of the public consciousness, hoping to keep the darkness at bay into the future.

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"Because of my letter stating that my dog is a psychiatric service dog, I get judgemental looks and comments from airline staff."

—response 28, from the December 11, 2016 "ACAA Third-Party Documentation Requirements: Survey of Psychiatric-Disability-Mitigating Animal Users" on p. 68 of our Handbook

The foundations of our reasoning matter, as do the patterns of thought we believe are acceptable or without challenge.

In the NPRM, DOT quotes from a particularly disturbing line of thought, which may merely be to represent it without judgment. This quotation reflects that some people assume, implicitly or not, that "the vast majority of people" with mental health disabilities are not "truly disabled", or that "PSAs do not receive the same level of training as true service animals" (p. 4 and p. 6 from ANPRM Comment from Spirit Airlines, Inc., July 9, 2018).

<https://www.regulations.gov/document?D=DOT-OST-2018-0068-4226>

This is ableism.

Our desire to be professional stops us from a profanity-laced tirade here, but this kind of thinking absolutely must be confronted and shunned as outright bigotry. We once again point out that the stewards of ACAA regulations should never compromise between (A) the bigotry that disgusts and disadvantages disabled people and (B) the minimum that actually protects access by blockading the bigotry. A "both sides" narrative gives credibility to the shameworthy.

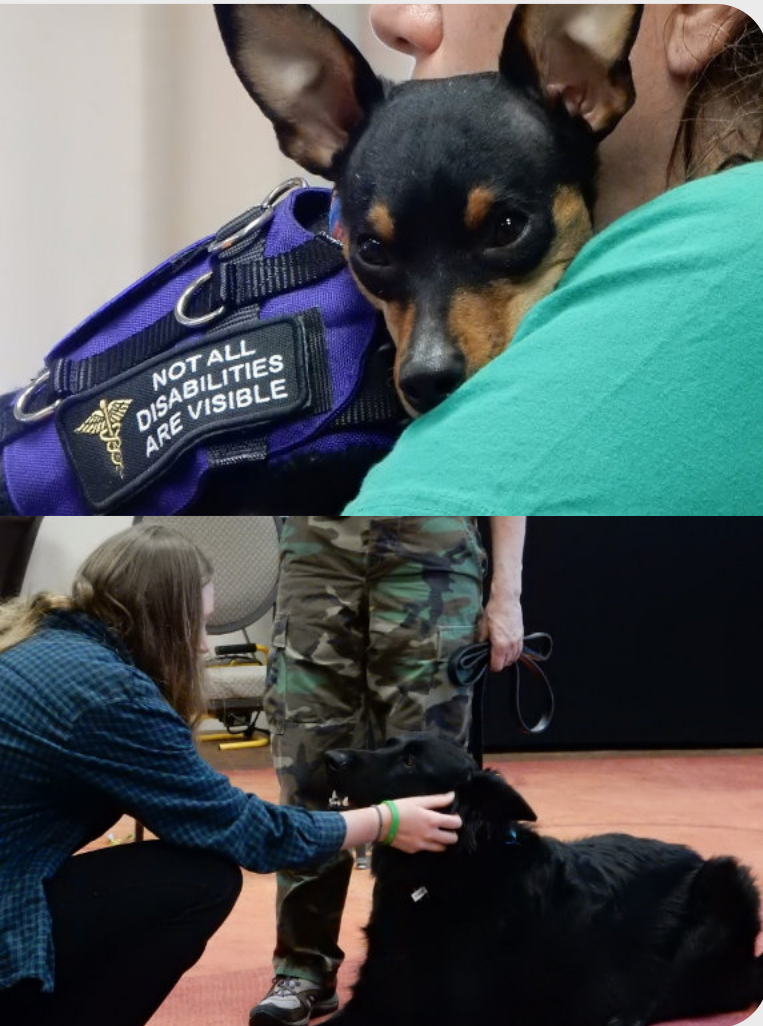
Beyond the basic morality of the situation, DOT's duty is to prevent discrimination on the basis of disability. Discrimination on the basis of disability type *is* discrimination on the basis of disability.

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"This double standard is sickening . While I used my service dog for psychiatric reasons and not mobility reasons there really should be NO difference."

—response 24, from the December 11, 2016 "ACAA Third-Party Documentation Requirements: Survey of Psychiatric-Disability-Mitigating Animal Users" on p. 67 of our Handbook

We believe DOT officials have come to realize this to some degree, and for that we are thankful. However, until we are assured this has sunk into the marrow of DOT's thinking and culture, it is our responsibility to inject ourselves to become part of DOT's internal monologue.

"I am a nurse practitioner that served at the 9/11/2001 tragedy. In spite of having medical documentation, a highly and professionally trained service dog, I have been grossly mistreated on more than one occasion by Hawaiian Airlines. My disabilities and service at 9/11 have been mocked, I have had to disembark planes twice and have been routinely hassled for insisting on my rights as a disabled flyer."

—response 9 (Elizabeth Bush, MSN, APRN, CARN-AP, CSAC, CCDP-D), from the December 11, 2016 "ACAA Third-Party Documentation Requirements: Survey of Psychiatric-Disability-Mitigating Animal Users" on p. 62 of our Handbook

DOT cannot simply assume its officials are non-ableist, but must be actively anti-ableist to catch the subtle ways ableism creates systems that marginalize us. This is the only way to end up with policies that are minimally ableist.

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Let us explicitly project how an anti-ableist approach would treat issues related to psychiatric service animals into the future.

Striving against ableism would mean not allowing people to be procedurally separated or singled out based on disability type. It would include recognizing that disability stereotypes heavily influence perceptions of "fraud" or who is "truly disabled". And non-ableist regulations would definitely not include a provision to revisit whether we should go back to discriminating on the basis of disability type.

A photograph of a woman walking a service dog on a leash. The woman is wearing a green shirt and a lanyard. The dog is a small, light-colored dog. In the background, there is a large yellow star.

Don't play service dog police and harass disabled people

- You can't see an invisible disability
- Encouraging suspicion makes outings harder for all service dog teams
- Service dogs have to behave—but not like robots
- A service dog team can have a bad day or need help
- Harmful or very disruptive behavior deserves removal, whether it's a service dog or not
- Behavior, not belongings www.psych.dog
- Service dogs come in all sizes and breeds
- No special labels, vests, or IDs are required for service dogs
- Needing help with training or etiquette doesn't deserve bullying

This is why we're concerned with DOT's reasoning in the NPRM, which seems to fit some of the problematic patterns we're calling out. DOT writes:

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"If the rule is adopted as proposed, the Department would monitor the experience of airlines in accommodating the use of service animals for those passengers with mental-health needs who depend upon such service animals. We would consider revisiting whether it is reasonable and appropriate to allow additional requirements for the use of such animals if there is a demonstrated need—for example, if there is a notable increase in instances of passengers falsely representing pets as mental-health-related service animals."

—6460, NPRM

We still have not seen statistics from any airline that demonstrate systematic abuse of the psychiatric service animal category. Yes, there is plenty of suspicion, innuendo, conflation, and confusion, often trading on ableist assumptions. But what airlines have really deployed in the anti-fraud narrative are prejudice-saturated anecdotes.

"I'm tired of the legal discrimination against those with psychiatric disabilities. Please allow us to use our medical devices without discrimination like everyone else!"

—response 29, from the December 11, 2016 "ACAA Third-Party Documentation Requirements: Survey of Psychiatric-Disability-Mitigating Animal Users" on p. 68 of our Handbook

We worry that by indicating a willingness to regress to discrimination against those with mental health disabilities based on these anecdotes, DOT is primed to accept the thinnest of reasons for unjust policies. Even if there were an

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actually verifiable "notable increase in instances of passengers falsely representing pets as mental-health-related service animals", it does not follow that any segment of service animal users can be justly punished for this.

The priority for disability rights laws is protecting access for people with disabilities. It is not to make access harder for disabled people in order to increase revenue for corporations to the tune of tens of millions of dollars a year (NPRM table ES-1, 6453).

"So DOT are people with mental health disabilities lesser citizen's than others types of Service Dogs? [sic] Do we have less Civil Rights? The ADA and ADAAA say discrimination is not allowed in any form, but the ACAA and DOT say discrimination is okay if the air lines are having problems with illegal dogs flying in the plane cabins."

—response 32 (Carol F. King), from the December 11, 2016 "ACAA Third-Party Documentation Requirements: Survey of Psychiatric-Disability-Mitigating Animal Users" on p. 70 of our Handbook

We must not reason by the fractured fantasy that all fraud can be eliminated. If there is *any* access for service animal users—which there must be—DOT should accept that some amount of fraud is inevitable. Practically, it boils down to this: how many disabled people's air travel ability is DOT willing to sacrifice to pointlessly chop off one hydra head of the mythical fraud monster?

Access *must* come before fraud prevention.



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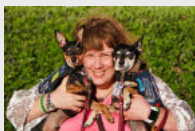


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[§6. Number of service animals per passenger is approximately correct](#)



§5. Large service animals—a smaller problem than you think

DOT's NPRM proposal about large service animals—those that may take up an inch beyond the user's foot space—is that airlines would not have to allow them in the cabin unless the service animal user may be placed next to an empty seat in the same class of service.

Passenger comfort is a strong theme in this section of the NPRM. We need some context.

Contemporary air travel makes people uncomfortable. The most minor perceived delay makes people uncomfortable. *Disability* makes people uncomfortable.

The disability community is more than merely uncomfortable being shut out due to others' passing discomfort. "Ugly laws" excluded disabled people from public places across the United States because non-disabled people were uncomfortable either just having us around or having to make a minor adjustment so we could (literally) have a seat at the table.

"People with Disabilities fought for their Civil Rights. Up until 1990 many states had "ugly laws" to keep the disabled (not pleasant to look at with CP, MS, etc.) out of public and locked up in basements. These are not histories taught in high school history. How many of you were taught in high school what horrors Women and Disabled People went through [sic] to be treated as human?"

—response 33, from the December 11, 2016 "ACAA Third-Party Documentation Requirements: Survey of Psychiatric-Disability-Mitigating Animal Users" on p. 70 of our Handbook

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We're not saying that physical discomfort or pain due to airlines decreasing foot space is not an issue. But this is not the basis for DOT's reasoning.

Historically, if a service animal team needed extra foot space, protocol on a full flight is to discreetly ensure a pairing with an appropriate seatmate. A significant portion of the population would prefer to be next to a service animal team, since—for them—this improves their flight experience. It's a win-win.

Here's what doesn't work as an excuse not to follow this protocol: (A) Insufficiently training crew members to discreetly ensure appropriate seatmates, and (B) acting as if disability accommodations do not deserve one or two more minutes built into the boarding time.

Yes, people will inevitably be uncomfortable in some seatmate-sorting situations. These are human interactions we're talking about. But that doesn't mean airlines can't use protocols to minimize the likelihood of that discomfort.

As a wheelchair user, this author has plenty of experience with necessary travel accommodations causing slight delays. Sometimes, for example, it's just because it takes longer to maneuver a lift around the tarmac at a small airport. Other times, it's because the system is designed with disability access as an afterthought, tacked on to satisfy an obligation rather than resonating within an architecture of universal design.

When access is treated like a favor—like something disabled people should be grateful to receive in any diminutive form—this perpetuates stigma and the ire non-disabled people feel at the audacity of disabled people trying to participate in society. This regressive approach is not the only mindset available to DOT.

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In other contexts—such as buses, restrooms, parking spaces, restaurant seating, and trains—it is customary to provide seating areas with extra space to accommodate people with disabilities. When they are not needed by disabled people, the extra space is often just a bonus for others. In fact, such a space on airplanes may be the outcome of the congressionally mandated study underway. See the January 13, 2020 release, "Study Initiated on Equipping Passenger Aircraft with Wheelchair Restraint Systems".

<https://www.access-board.gov/news/1980-study-initiated-on-equipping-passenger-aircraft-with-wheelchair-restraint-systems>

In our discussion of foot space issues in §3.c. and §3.d. of our ANPRM Comment (June 26, 2018, on p. 234–237 of our Handbook), we referenced that airlines in Canada have provided an extra seat and foot space at no charge for those with larger service animals. This is not our recommended approach, but it highlights that DOT's approach does not need to make foot space into another excuse for airlines to exclude disabled people.

DOT's proposal regarding large service animals has the unfortunate approach of prioritizing the relief of airline responsibility and the relief of a few non-disabled passengers of their disability-related discomfort. Doing so would embody a view without compassion, lacking empathy, and shorn of a willingness to encourage the human decency foundational to accommodations.

This view would treat basic access for people with disabilities as not being worth even a minor inconvenience to others.

If an airline chooses to create a system that pits disability access against non-disabled comfort—for example, by shrinking legroom—DOT is not obligated to acquiesce and always favor the airline's preferred outcome in the dispute it

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fostered. The airline and some basic human decency have to take up some slack in this.

We believe this part of the NPRM proposal unjustly downgrades service animal users. The proposal would make it so that an airline employee has the authority to arbitrarily deny access if the employee believes that: a service animal is "large", the service class is full on any available flights, and fellow passengers should not even be consulted about sharing footspace.

There is a wide variety of compressing ability across breeds and individuals, which makes it difficult to ascertain whether a dog would fit into a certain space based on the dog's breed, weight, or measurements. This means it is only reasonable for borderline assessments to take place on the aircraft, at which point it is so much easier just to find a willing seatmate anyway if the service animal exceeds the owner's foot space by some number of inches.

We were surprised in particular that DOT officials cite prototypical service dog breeds as "large" in the NPRM ("German Shepherds, Golden Retrievers, and Labrador Retrievers", 6461), since the "large" label seems to indicate "too large to fit". There are many much larger breeds, known in the community as "extra large" or "giant", some of which are necessary for mobility work.

We understand that DOT recognizes the prototypical breeds as being trainable to fit into foot spaces. We urge DOT not to use these breeds as the borderline case, since it has historically been the extra large/giant breeds that are in fact the borderline cases.

DOT must take a more practical and empathetic approach to service animal size—one in which the airlines will take some

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basic responsibility for the access challenges and tensions they elect to create.

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If the service animal NPRM were law, to determine fit in airplane foot space—

Before boarding:

- Airlines might use breed, but individuals within a breed can vary a lot
- Airlines might use measurements, but these don't reflect how much an individual can curl up against seat posts.

After boarding:

- Employees might see whether the service animal fits, but then it is less trouble to discreetly find a happy seatmate than to remove the team from the plane.

The overall best way not to wrongly deny a service animal team due to foot space issues is to **pair happy seatmates!**

All three service dogs in this picture—from 50–200+ pounds—have successfully flown in the cabin and delighted seatmates.



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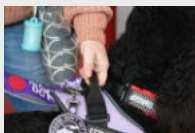


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[§5. Large service animals—a smaller problem than you think](#)

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[§7. Control of service animals](#)



§6. Number of service animals per passenger is approximately correct

DOT's reasoning is not far from the mark when it comes to allowing airlines to restrict the number of service animals per passenger to no more than two. Earlier, we argued for our ideal when it comes to this topic. For more information, see p. 15–16, 35, and especially p. 246–248 of our attached Handbook ("The path to responsible air travel governance: A recent history of service animal recommendations", May 2019).



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§7. Control of service animals

§7.a. The tethering and related language should be tightened

We appreciate DOT specifying the tethering expectation. Explicitly making this the default is appropriate.

A default component of service animal control should be a tethering of some means between the handler and the animal, in the absence of a disability-related reason to do otherwise. As we highlighted in footnotes 10 and 60 on p. 10 and p. 210 of our Handbook, DOJ's language at 28 CFR §36.302(c)(4) does not properly convey this tethering default.

https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=1fcb95e0991fa49ff719bbe362cdddc1&ty=HTML&h=L&n=28y1.0.1.1.37&r=PART%23se28.1.36_1104#se28.1.36_1302

The NPRM language that mirrors DOJ's, and that could use a slight adjustment, is as follows:

"A service animal must have a harness, leash, or other tether unless the owner is unable [...]"

—6475, NPRM

Having a tether is not the same as *using* a tether. A leash is not nearly as helpful, for example, when folded away in a pocket—or attached to a dog, yet trailing on the ground.

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DOT has an opportunity to improve on DOJ's oversight here. The simple fix is to change "have" to "use" in the third sentence planned for 14 CFR §382.74(c). Slightly better is to begin it with "A service animal handler must use a harness, leash, or other tether unless the handler is unable [...]". Beyond this, our ideal language is on p. 258–259 of our Handbook, as reproduced just below:

"A service animal must be under control at all times. This includes the use of a harness, leash, or other tether, unless the restraint device would interfere with the service animal's safe, effective performance of work or tasks or the individual's disability prevents using these devices. In those cases, the service animal handler must be able to recall the service animal to the individual's side promptly using voice, signal, or other effective means of control. Regardless of the means of control, any service animal must not wander from the individual, but must remain next to the handler when not immediately performing work or tasks directly related to the individual's disability."

Another easy change we would like to see lies in a related part of the proposed regulatory language. DOT includes muzzling as an example of a way a service animal user might control a barking dog.

During the Reg Neg, we detailed why muzzling is not an appropriate way to deal with bad behavior for a purported service dog in public. Many muzzles are not safe for the dog for long periods, they can increase aggression without focused prior training, and muzzles can be unexpectedly removed by a frantic, agitated dog. The very fact that muzzling is even

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possible in a given situation—because someone carries a muzzle—is usually portentous.

This all means it is not a good idea for DOT to endorse muzzles as a solution, especially since less experienced handlers are not apt to understand their proper uses and serious deficiencies. To modernize the older guidance language about muzzling (carried forward in the proposed regulatory language), DOT can simply substitute "calming" for "muzzling" in 14 CFR §382.79(d).

The result would be "[...]e.g., calming a barking service dog [...]", rather than "[...]e.g., muzzling a barking service dog [...]". This simple gesture by DOT would demonstrate a willingness to lean on the practical advice of experts, rather than casual theoretical suggestions that seem okay only to non-experts.

We offer a final suggestion in this subsection to aid DOT with tightening up the proposed regulatory language in this area. This suggestion involves an airline's explanatory responsibility when denying service.

In the proposed 14 CFR §382.79(e), DOT does not use the old parallel language from 14 CFR §382.117(g). Unfortunately, the proposed language might apply *only* to passengers the airline employee(s) believe(s) to be disabled, and only to animals they believe to be service animals.

In other words, the language unnecessarily places a judgment on the part of the denying airline employee(s) as to whether the denied pair is a service animal team or not, only obligating the airline to give a denial explanation if it is a service animal team.

Instead of inadvertently making that kind of judgment a part of whether the airline has to provide a denial explanation, it's simple enough to clean up the language so there's no possibility an airline will wrongly fail to provide an explanation

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because an employee did not believe the pair was a service animal team.

Another aspect is that the proposed phrasing does not require a denial explanation if the airline refuses to fly the animal as a service animal, yet offers to fly the animal as a pet (charging a fee and perhaps requiring the animal to fly in the cargo hold). The current (old) regulation does not have this side effect, but it is also an easily corrected infelicity in the proposal.

Here is the original proposed language from p. 6476 of the NPRM, without updates:

"If you refuse to provide transportation to a service animal based on any provision in this Part, you must provide the individual with a disability accompanied by the service animal a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraphs (a) through (c) of this section or is otherwise specifically permitted by this Part. You must provide this written statement to the individual with a disability accompanied by the service animal either at the airport, or within 10 calendar days of the refusal of transportation."

—6476, NPRM

An updated version of 14 CFR §382.79(e) follows that (1) does not assume the status of an animal claimed as a service animal, or of a person who claims to have a disability, and (2) does not let airlines avoid denial explanations by offering to treat the animal as a pet.

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"If you refuse to provide transportation to a purported service animal as a service animal accompanying an individual with a disability based on any provision in this Part, you must provide the individual accompanied by the animal a written statement of the reason for the refusal. This statement must include the specific basis for the carrier's opinion that the refusal meets the standards of paragraphs (a) through (c) of this section or is otherwise specifically permitted by this Part. You must provide this written statement to the individual accompanied by the animal either at the airport, or within 10 calendar days of the refusal of transportation."

Similar updates may easily apply to the earlier parts of DOT's proposed 14 CFR §382.79, especially using a word like "purported" in front of occurrences of "service animal"—or some other neutral phrasing that indicates the animal is presented as a service animal.

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§7.b. Alternate handlers needn't be a "safety assistant"

DOT lists two reasons it might prefer to limit service animal handlers to the disabled passenger and a "safety assistant," as described in section 382.29(b)" (6474), rather than opening up the alternate handler position to any third party traveling with the disabled passenger. In DOT's words, the proposed limitation is:

"[...] in order to make clear that service animal trainers traveling with trained service animals not serving as a safety assistant for a passenger with a disability, and other passengers traveling with an individual with a disability on aircraft, would not be considered service animal handlers under the ACAA rules."

—6463, NPRM

DOT worries about service dogs being delivered or otherwise transported by non-disabled dog trainers. Since the access right attaches to the disabled person and not the animal, this concern is fair. However, there are two easy fixes for this.

First, the planned behavior attestation already excludes the worrisome situation upfront by including the phrase "for my disability".

Second, there is a way on the back end (in the regulations) to clarify that airlines are not required to transport service animals that aren't meant to work for a disabled passenger. In the planned answer for 14 CFR §382.72, DOT could briefly specify that airlines are only required to transport a service animal

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when it is accompanying a disabled person the service animal will help while flying or at the destination. This could read as follows:

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"§ 382.72 Must carriers allow a service animal to accompany a passenger with a disability?"

You must allow a service animal to accompany a passenger with a disability, *if the service animal will help that passenger while flying or at the destination*. You must not deny transportation to a service animal on the basis that its carriage may offend or annoy carrier personnel or persons traveling on the aircraft."

(italics added to our NPRM language addition, 6475)

These measures should resolve DOT's worry about non-disabled dog trainers transporting service animals.

Practically, we're not very concerned about whether members of the disabled passenger's party would be able to help handle the disabled person's service animal, when needed. However, given that this does and should be able to happen, there is not sufficient reason to make the regulations exclude this possibility. If we do not nitpick here, there may be unforeseen consequences.

A member of the disabled service animal user's party should not need to meet the "safety assistant" description in 14 CFR §382.29 in order to provide handling assistance. Sometimes it is simply more reasonable for a responsible member of the disabled service animal user's party to assist with taking a dog



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COLUMBUS



to an airport relief area or holding the dog while the disabled passenger squeezes into a tiny onboard restroom.

Our suggestion above, to 14 CFR §382.72, would clarify that the service animal must be traveling with a disabled passenger the animal will help. This means DOT's suggested definition of "service animal handler" in 14 CFR §382.3 only needs a slight adjustment to avoid being overly restrictive. This adjustment is as follows:

"A *Service animal handler* is a qualified individual with a disability who receives assistance from a service animal(s) that does work or performs tasks that are directly related to the individual's disability, or a **responsible and familiar third party** who accompanies an individual with a disability traveling with a service animal(s)."

(boldface added to our NPRM language adjustment, 6474)

This language would avoid making anyone outside of the disabled passenger's party responsible, while allowing party members to appropriately assist with the handling responsibilities.

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§7.c. ESAs should be in pet carriers, if given access

If there were access for individuals with ESAs, we maintain that the best compromise for safety would be to restrict ESAs to those that fit in pet carriers. We elaborated on this in our Handbook, on p. 14–16, p. 94–95, p. 210–213, and especially p. 258–259, as well as in §2, ESA 1 (p. 7–11) in "Service Animal Advocate Positions and Reasoning" from September 15, 2016.

<https://www.transportation.gov/office-general-counsel/negotiated-regulations/service-animals—advocate-position-and-reasoning>

For crate-free access when flying, should animals be both **trained** and **accustomed** to behaving in similarly stressful public places?

921 responses

94.6% Yes (871), 5.4% No (50)



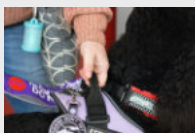
(from page 110–111 in our Handbook)



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§8. Uniform first-party documentation can educate, third-party is a pointless burden

A table of contents for §8 is below, since this section is more extensive and structured than others.

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§8.a. Documentation uniformity and submission, transferability, storage, security and privacy, and linked assistance

§8.a.i. Documentation must be uniform and variously submittable

We appreciate that if a form may be required, DOT plans to obligate airlines to use a standardized version. We understand that DOT has heard advocates' complaints about the difficulties of trying to swim through airlines' kelp forest of idiosyncratic requirements.

We strongly support DOT-sourced uniformity for any service animal related documentation that airlines may be allowed to require. There are many facets to this uniformity.

Service animal users should be able to use the same PDF form, obtained from DOT or any airline, with any airline that requires that kind of form. This PDF *must* always be accessible to those using screenreaders, and it really *should* be electronically fillable for ease of completion.

Airlines that have a website should be advised in the regulations that they must clearly and openly post or link to any form they require. If they choose to post a form themselves, it should be the original, accessible, and hopefully fillable version that DOT should also make publicly available. It cannot be a flattened version or picture version (e.g., JPG) that removes its accessibility or convenience features.

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Airlines should be required to accept the PDF in a variety of manners, such as by email, website-based file upload, mail, or in person at the airport.

Service animal users must be allowed to complete any first-party documentation at the ticket counter if they are passengers of an airline that requires it. We note this is addressed in DOT's planned 14 CFR §382.75(d) as follows:

"You must keep copies of the forms identified in paragraphs (a) and (b) at each airport you serve. As a foreign carrier, you must keep copies of the forms at each airport serving a flight you operate that begins or ends at a U.S. airport."

—6475, NPRM

However, we believe this language wrongly implies each airline *should* require service animal users to complete the forms, rather than merely requiring airlines to provide any forms they *choose* to require.

We suggest the following language as an update to 14 CFR §382.75(d):

"If you require any service animal user to use any of the forms identified in paragraphs (a) and (b), you must keep copies of any such required form readily available at each airport you serve. As a foreign carrier, if you require any service animal user to use any of the forms identified in paragraphs (a) and (b), you must keep any such required form readily available at each airport serving a flight you operate that begins or ends at a U.S. airport."

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The "any such required form" construction is designed so that airlines are not obligated to provide forms they do not require. For example, if an airline were to require a behavior attestation but think it would be unethical to require a veterinary form or unhelpful to deal with elimination forms, that airline could deal only with the behavior attestation.

The "readily available" construction is designed with two purposes in mind. First, so that airlines may simply print forms on demand, rather than needing to keep them lying around among piles of other forms. Second, so that airlines have notice they are not to keep such forms in an airport location far from the ticket counter.

Parallel updates apply to DOT's planned 14 CFR §382.75(e) and (f), the originals of which are just below:

- !! (e) If you have a website, you must make the blank forms identified in paragraphs (a) and (b) available to passengers on your website in an accessible format.
- (f) You must mail copies of the blank forms identified in paragraphs (a) and (b) to passengers upon request."

–6475, NPRM

The updates could be as follows:

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into one
#simplifly



"(e) If you have a website and require any service animal user to use any of the forms identified in paragraphs (a) and (b), you must make any such blank forms clearly available to passengers on your website in an accessible format.

(f) If you require any service animal user to use any of the forms identified in paragraphs (a) and (b), you must mail copies of any such blank forms to passengers upon request."

We hope these updates clarify that airlines are only responsible for providing forms they require.

Finally for this subsection, we would like airlines to be empowered to replicate the exact language of any PDF form in an accessible website-based form that results in a detailed and personalized electronic confirmation (e.g., email, text, or site download with the completed PDF). This applies to any first-party *or* third-party documentation that airlines may be allowed to require of service animal users.

Providing this option for service animal users and for their third-party professionals may ease the burdens all around.

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§8.a.ii. Documentation must be transferable among airlines to reduce burdens

If an airline creates its own website-based form that models DOT's PDF form, DOT must prohibit the airline from requiring service animal users or third-party professionals to complete this website-based form, rather than DOT's PDF version. This prohibition is to ensure that if a service animal user has completed a PDF form for travel with one airline, that very same form will be transferable for travel with any other airline.

The transferability of forms is much more important for any third-party documentation, since obtaining such extra paperwork from a third party saps a lot of time and money from disabled people.

One might think this transferability solves another issue—DOT asked whether service animal users could "have their veterinarians complete the Department's Service Animal Air Transportation Health Form at the animal's annual physical" (6467).

Most people do not fly every year. It only makes sense to prepare this form for an appointment you would have anyway if you already know you'll be flying and that the form is required. Even then, some professionals require either an extra fee or a whole extra visit to complete forms.

There is a common way to reason about this, which the American Veterinary Medicine Association (AVMA) and individuals have conveyed in comments. People with privilege understandably think that because dogs or people receive medical care, it's no big deal to obtain and provide proof of that care. Once again, this may sound good in theory to those of us with more funds and advantages.

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But there is a big practical difference between (A) getting care and (B) obtaining and providing specific proof of that care. Stacking the costs of (B) on top of the costs of (A) weighs heavily on many disabled people. Later, we will sort out whether those leaden costs crush attempts to justify them.

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§8.a.iii. Documentation storage should be an option to reduce burdens

"In order to reduce the [documentation] burden on frequent flyers, airlines should allow passengers to store their information in a profile that eases future [documentation] completion."

—from the November 24, 2016 "Pre-NPRM Comment: DOT's ACAA Service Animal Regulations" on p. 25 of our Handbook

This position on documentation storage especially applies if DOT plans to allow airlines to require third-party documentation from service animal users. Third-party documentation is a much larger burden to compound by requiring it each time. It is also untoward to allow airlines to require service animal users to complete first-party documentation multiple times for a round trip, if the documentation language or the specific situation does not necessarily dictate such a need.

Our rationale below, in two paragraphs from p. 25 of our Handbook, fills in some details. A relevant footnote and associated appendix are in the original.

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"Airlines must allow passengers to store their [documentation] information as part of their profile in either a frequent flier program or through the carrier's required accommodation request form ("ARF"). Airlines would allow passengers to pre-populate the same attestation information for future travel and re-attest that the information is accurate. Airlines indicated at the Reg Neg they would commit to exploring whether this is feasible; a third-party report indicates this profile retention is feasible.

This profile retention solution was suggested and supported by advocates at the Reg Neg as a way to make the [documentation] palatable to the service animal user community. To allay privacy concerns, profile retention must be voluntary (one must actively opt in), and airlines would be prohibited from using [documentation] information for commercial purposes. Many service animal users have been amenable to this process as long as it is flexible regarding the retention and use of their data."

"Allowing flyers with service dogs to keep their documentation on file for a set period of time could also be helpful, so they are not scrambling to get documents for a last-minute flight if they are within that time frame."

—response 374, from the May 22, 2018 "Flight Access Survey Report" on p. 190 of our Handbook

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"Just because a year passes on my doctors notes and prescription dates doesn't mean my disability magically went away. It's a pain to have to get new letters from my vet[...] every year with just a different date."

—response 388, from the May 22, 2018 "Flight Access Survey Report" on p. 192 of our Handbook



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§8.a.iv. Disabled people deserve documentation security and privacy

Please make explicit that airlines and any contractors must secure any service animal related submissions comparably to how they secure personal financial information. Our community has been displeased with the casual attitude some airline employees have taken when handling disability-related information up to this point. The privacy and security of disabled people's personal information matters.

"Please protect our rights and privacy and time."

—response 177, from the May 22, 2018 "Flight Access Survey Report" on p. 154 of our Handbook

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§8.a.v. Documentation-linked assistance must be optional

While we do not oppose airlines using the submission of a service animal form to trigger the *option* to receive disability assistance at the airport, we would like DOT to explicitly prohibit the automatic assignment of such assistance when a service animal form is submitted.

We have heard many stories from disabled individuals who have been strong-armed by airline employees into waiting around for or accepting assistance when it was neither wanted nor needed. This situation needs no encouragement by well-meaning computer programmers, yet we fear that is exactly what would happen without DOT's explicit foresight to stop it.

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§8.b. An enhanced behavior attestation can educate

We have two straightforward points to help with the behavior and training attestation.

First, we appreciate that DOT considered and incorporated many of our content recommendations from the Reg Neg and after. The particulars of the attestation's wording can make a big difference. We advise DOT to use great caution if DOT decides any of the document's language should change.

Second, we have a small design suggestion for the attestation.

One of the advantages of the decision tree over an attestation was that the decision tree allowed multiple option branches for a variety of answers. This allowed individuals to actively consider and choose which options applied to their situation, without having one path that clearly resulted in no access with an animal under the ACAA.

There is a simple enhancement for the proposed form that would be a worthwhile echo of the decision tree concept. Instead of simply having one check box next to each answer, DOT should provide two options—one "Yes" and one "No".

This would make it more likely individuals will read the form to ensure the appropriate selection, but also to thereby become more educated about the expectations.

During the Negotiated Rulemaking, we cautioned that people are not very likely to comprehend—or even read—many consecutive blocks of legalese. While it is a good idea to use (at least) one checkbox per claim, we encourage DOT to take a small step further to make an "enhanced attestation" that has an even greater chance for success.

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§8.c. No good reason to violate rights with third-party (veterinarian) documentation

§8.c.i. If we restrict disability rights with health and safety precautions, they must be effective, meet real needs, and not overburden

Requiring people with disabilities to obtain third-party documentation—an outsider's validation—goes against basic human rights. So if a government agency is going to empower corporations to do this to disabled people, there better be darn good reason for it.

We're afraid it needs to be said that a legacy of burdens is not a good reason to have burdens in the future.

Good reason for practical limits on human rights might include necessary and effective safety precautions borne out of evidence. But the burden of proof weighs heavily on those who would restrict human rights, not on those who are owed them by default in a civilized society. Rights-limiting justification must not begin and end with ivory tower speculation, brazenly misinterpreted data, or the most sensational of anecdotes.

With adequate justification severely lacking, DOT considers allowing airlines to require service dog users to provide a veterinarian-completed form.

We are going to explicitly and charitably assume DOT would not allow this merely to force disabled individuals to get an outsider's metaphorical pat on the head before traveling. Such

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extra burdens for the sake of burdens are an abhorrence to disability rights. Instead, we will evaluate DOT's proposal as if the form is intended to accomplish focused objectives.

There are two main objectives the vet form, specifically, might be intended to meet: (1) reduce the chance of aggressive behavior from service dogs, and (2) reduce the chance of service dogs spreading disease or parasites. We believe DOT is also concerned with minimizing burdens on disabled passengers and reducing fraud.

We will consider these issues in turn. We will make it apparent that the vet form fails to meet every single one of these concerns—and therefore cannot legitimately be part of the regulations.

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§8.c.ii. The vet form is an ineffective and inappropriate way to reduce service dog aggression

DOT should not treat veterinarians as **able** to sign off on animal behavior. It is this simple: veterinarians are not experts in animal behavior. We similarly would not expect our own medical doctors to be experts in human psychology or behavior.

Asking veterinarians to sign off on an animal's behavior is as odd as getting doctors to sign off on a wheelchair's good repair during their 5–15 minutes with a patient.

Yes, we might expect people employed in nearby fields to know more than average on associated topics. But we wouldn't treat them as experts and place them between disabled people and their travel.

Veterinarians are not **willing** to attest to whether a service dog is aggressive. This is true even if the actual statement is only about the veterinarian's in-person observation. Veterinarians' reluctance is understandable, since they are not experts on animal behavior and they fear liability.

The American Veterinary Medical Association (AVMA) has been clear about this, as have individual veterinarians who originally commented on AVMA's article ("AVMA, United Airlines reach agreement on veterinary health form", 3/18/18). It is apparent from AVMA's article and ANPRM comment (7/9/18) that veterinarians cannot be expected to act as experts on animal behavior:

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"[...] the examining veterinarian is not in a position to assess [...] how an animal might react when placed in such a foreign environment".

<https://www.avma.org/blog/avma-united-airlines-reach-agreement-veterinary-health-form>

"With respect to assertions about behavior, it is important to recognize that provision of documentation demonstrating prior training and/or a satisfactory response to a behavioral assessment is not sufficient to guarantee good behavior on an airline flight. It is not possible to predict the future behavior of an animal when that animal is placed in an unfamiliar environment, and the current behavior of the animal must be considered regardless of its previous good conduct. It is not, under any circumstances, reasonable to ask a veterinarian to directly guarantee or certify that an animal will behave appropriately onboard an aircraft."

<https://www.regulations.gov/document?D=DOT-OST-2018-0068-4276>

DOT might think its proposed vet form language is reasonable because it does not ask veterinarians to predict behavior, but observe. Yet this does not eliminate veterinarians' non-expertise nor their liability concerns—over a third of service animal users believe their vets would not even be willing to sign a behavior form (see p. 108 of our Handbook).

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[...] do you think your veterinarian would be willing to sign their name to a statement predicting whether an animal would behave in a flying environment?

916 responses

63.9% Yes (585), 36.1% No (331)



(from page 108 in our Handbook)



www.psych.dog

So what behavior-related information did AVMA actually suggest such a form should contain, if any is needed?

AVMA's 3/18/18 article recommendation (if a vet form is required) was to simply have veterinarians report what the service dog user says:

"Instead, we suggested adding language that would allow the veterinarian to offer additional information, obtained from the owner, regarding certain behaviors (e.g., biting, scratching) and the circumstances surrounding those behaviors [...]."

<https://www.avma.org/blog/avma-united-airlines-reach-agreement-veterinary-health-form>

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The animal's owner (or owner's agent) has represented to me that (choose one):

☐ The animal has not bitten, scratched or otherwise injured or attacked any person.

☐ The animal has bitten, scratched or otherwise injured or attacked a person. The situation leading to the bite, scratch or injury was described as follows:

(from United Airlines' vet form, January 2020)

www.psych.dog

<https://www.united.com/ual/en/us/fly/travel/special-needs/disabilities/assistance-animals.html>

This all shows that veterinarians are neither able nor willing to sign off on non-aggression. The predictable, practical result: the non-aggression aspect of the vet form will stop service dog users from traveling, for no good reason.

DOT already proposes to have service dog users themselves attest to public access training. AVMA's own suggestion preceding DOT's proposal—that if veterinarians are forced to report anything, they should only report what the customer says—could only create redundant hearsay, given DOT's plan for the user attestation.

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Uniform first-party documentation can educate, third-party is a pointless burden



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"[...] the extra stress and expenses to clear my living medical equipment doesn't make us any safer."

—response 216, from the May 22, 2018 "Flight Access Survey Report" on p. 163 of our Handbook

We therefore can't see the point in forcing service dog users to also have that attestation reported by their veterinarian, which is the very most veterinarians *might* be willing to do. AVMA's 7/9/18 ANPRM reasoning backs this up:

"Where it is deemed necessary to collect other information or declarations, including information about the animal's training, this should be assimilated as much as possible into existing documentation to minimize burden on the passenger."

<https://www.regulations.gov/document?D=DOT-OST-2018-0068-4276>

Given DOT's proposal, it makes sense from the veterinarian perspective and the service dog user perspective to eliminate the behavior aspect of the vet form.

"They are not going to open themselves to the liability of a lawsuit for "predicting" behavior."

—response 86, from the May 22, 2018 "Flight Access Survey Report" on p. 130 of our Handbook

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!! Veterinarians are not trained to assess behavior unless they are behaviorist. [sic] You usually have to travel long distances to find a Veterinary Behaviorist. A regular vet cannot even teach dogs basic obedience. How can they determine how a dog will behave?

[...] Airlines have no clue how they are designing these laws."

—response 135, from the May 22, 2018 "Flight Access Survey Report" on p. 145 of our Handbook

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§8.c.iii. No need for the vet form to reduce the spread of ill health

There is a difference between requiring good service animal health and requiring disabled people to acquire, pay for, and present specific measures of that good health. Requiring proof from a third party should be well justified so as not to create access barriers without hard evidence of the need and payoff.

Before we assess whether this third-party documentation is at all justified, we feel we must call attention to factors that may cause DOT officials to have a psychological investment in the veterinarian form.

We intend absolutely no disrespect in doing so. The purpose of explicitly recognizing these possibly unconscious biases is that if we don't, they may inadvertently bear on how DOT evaluates whether there should be a vet form.

We are aware that DOT officials have attended an American Veterinary Medical Association (AVMA) meeting with airlines and solicited feedback from AVMA members.

"The Department, along with a number of U.S. airlines, attended a meeting at the AVMA's headquarters on October 29, 2018, to discuss the potential for the airlines to create a standard form document to use to verify service animal vaccinations. The Department used information learned at this meeting, such as what vaccinations should be required to ensure the health and safety of the traveling public, the duration for which the form should be valid, and whether animals should be inspected for pests, as guidance for the content of this form."

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AVMA members are qualified to opine on whether pets generally should be vaccinated. However, AVMA members should not be considered experts on whether service dog users should be forced by airlines to provide proof of such vaccination—especially when this is in their economic self-interest.

This would be analogous to asking a wheelchair repair lobbying corporation whether wheelchair users should be forced to provide a novel good-repair certificate to travel, in the absence of any evidence for this need. This would be part of a gratuitous burden-multiplying pattern.

DOT must not let its investment in soliciting AVMA member feedback bias DOT from a more objective analysis.

There is a serious possibility that AVMA suggestions for vet form content should be bracketed because they were obtained under a premise that doesn't hold. The false premise is that requiring the vet form is acceptable under disability rights law—that *evidence* indicates there would be a larger problem if such proof were not required.

Through the Reg Neg and after, we are also aware that some airlines have pushed hard for something like the vet form for two reasons we believe are ill-considered. Our hope is that DOT will not entertain these reasons or allow airlines to require the vet form merely to appease the airlines—as if this were haggling at the old rug bazaar, rather than a practical implementation of disability rights principles.

First, some airline officials think third-party documentation is some shortcut to success when it comes to service animals. When pushed in conversation, it seems to come down to believing in the rampant-fraud narrative: that fraud is ubiquitous, and since they can't trust people, they have to force

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disabled people to get an outsider's stamp of approval. At the same time, the story is that third-party documentation is ineffective at stamping out fraud.

This is great cause for cognitive dissonance. The thought pattern is that things have gotten worse since the introduction of third-party documentation, so more third-party documentation must be better. We are flummoxed.

Second, and with the vet form specifically, airline officials will say each of its two parts are necessary. They seem to believe a veterinarian must sign off on the animal's behavior because airlines do not have the trained personnel or time to evaluate animals.

DOT is already set to provide an answer to this concern in two forms: the first-party behavior attestation and the proposal to allow airlines to require service animal users to check in early, and with specifically trained personnel.

Airline officials seem to believe all service animal users should be required to provide rabies information in case one purported service animal breaks skin in an attack. However, this could happen anywhere, yet service animal users are not forced to provide a special DOJ rabies form to every place of public accommodation before entry. So what is different about the flying context?

If the parties involved in an incident were to exchange information so they could follow up, there would not be much of a worry. In cases where this does not or cannot take place, law enforcement or other outside officials should be involved—airlines have privacy concerns about sharing one passenger's information with another, which makes providing rabies information to the airlines suspect from the beginning.

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In various localities, the law enforcement response comes from either animal control or the local police. The airline officials who argue for the vaccination portion of the vet form have said it is a hassle to call law enforcement to sort things out on the rare occasions of a serious incident, because the response inside an airport is heavy-handed by nature, no matter the situation.

Airline officials simply do not like to get grief from the law enforcement officers over having been called out and needing to provide a large response to what can normally be handled by animal control.

In case it needs to be said, airline officials' desire not to feel bad due to law enforcement officers' grumbling—in spite of airline officials taking the appropriate action—is not a good reason to force hundreds of thousands of disabled people to face the burdens of a vet form.

Further, given airlines' inability to share passengers' personal information, the furthest an airline can assure a bitten passenger is that the airline requires the vet form of service animal users. This barely registers as helpful.

Even if airlines could share the information on the vet form with the bitten passenger, it would still be appropriate to call the relevant medical and/or law enforcement authorities for the proper treatment or incident facilitation. Apart from loading an extra burden onto people with disabilities, the vet form solves none of the issues—even the one that merely involves airline employees feeling bad because law enforcement officers are angry at them.

Starting on page 203 of our Handbook, we already used statistics to deflate the notion that rabies (or parasites generally) are a concern among service animals, in air travel or elsewhere. Domestic dogs are no longer a significant source of

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rabies anymore and only 1–3 people are reported to have rabies in the US each year. No one can reasonably claim that service animals, especially, are running up and down the aisles and infecting anyone with rabies.

We are not reproducing all of the shockingly small statistical details here. Instead, we strongly urge DOT to review the information we already provided in order to ensure fact-based reasoning that should cool any heated calls to burden service animal users with health forms. Any simple look into the actual facts of the matter is enough to clear up one's thinking.

There is a point we will restate, since DOT calls it out in the NPRM. It is easy to mention the possibility of preventing nightmarish, painful treatment for rabies as a way to engage emotions and gain assent. As DOT notes on page 6464,

"Airlines also argue that in the event a service animal bites an individual on an aircraft, proof of up-to-date vaccinations will prevent the need for the injured passenger to undergo unnecessary and painful treatments for certain diseases, e.g., rabies, although according to the Center for Disease Control and Prevention (CDC), any dog that bites an individual should be assessed and monitored by a local or state health department over a 10-day period irrespective of whether there is proof that the animal has been vaccinated."

—6464, NPRM

Contrary to the way post-exposure treatment worked in the 1980s, for decades treatment has consisted of relatively painless shots in the arm (see footnote 59 on p. 209 of our Handbook). We should always use caution with arguments that inflame our emotions and encumber our reasoning, but all the

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more so when the source demonstrably gets essential facts wrong.

There is another important point that warns us against a one-size-fits-all vaccination approach: for populations, vaccinations are great, but for particular individuals and in particular ways, they can cause health issues. This concern is not related to the "anti-vaxxer" phenomenon in humans.

Some service dogs are acutely allergic to ingredients in vaccines and their users deserve exemptions. Other service dog users choose to titer-test, rather than continue to vaccinate.

Titer-testing involves measuring actual antibodies to a disease—an earlier, initial vaccination is standardly what instigated the ongoing antibodies. Rather than injecting another vaccination when there is provably no need to "boost" the dog's ability to produce antibodies, titer-testing allows dog owners to only vaccinate when it might actually help.

Some localities are wising up to these possibilities. As an example at the state level, see the short February 7, 2020 article "Delaware Lawmakers Pass Groundbreaking Bill to Allow Titer Test in Lieu of Rabies Vaccine".

<https://www.dogingtonpost.com/delaware-lawmakers-pass-groundbreaking-bill-to-allow-titer-test-in-lieu-of-rabies-vaccine/>

It is a nice fantasy that all service animals will healthwise be impervious robots with a perfect ability to follow the narrowest form of contemporary vaccination protocols for the general population. However, it is neither difficult to see nor onerous to account for the possibility that a service animal may be fit for service in all ways, yet its disabled user is senselessly prohibited from traveling due to an over-simple approach to vaccinations.

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Our community has been concerned about the impediments of such vaccination requirements for a long time—

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"I believe requiring vaccination proof is highly immoral when it requires vaccinations that are not federally required. There are legitimate reasons to do low vaccine protocols (i.e, one of my dogs literally sprays blood for 48 hours after any vaccine), which doesn't affect the workability of an animal. Titer tests should be permitted. Some animals / states grant rabies waivers as well, so those animals should be accommodated."

—response 89, from the May 22, 2018 "Flight Access Survey Report" on p. 131 of our Handbook

The easy way to account for this is also the right way—eliminate the vet form. Leave animal health regulations and enforcement to local authorities.

This subsection's main purpose is to convince readers that there is no need to have the vet form in order to reduce the spread of ill health. The form runs into various problems, not least of which is violating human rights, but a big part of what should sink it for DOT is that the evidence genuinely shows the vet form to be both totally unnecessary and surprisingly unhelpful at its apparent purpose.

DOT must only introduce new burdens for disabled passengers when those burdens are unambiguously justified.

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"Those of us who use a service dog keep up working with our dog to maintain their skills. We also adhere to high standards of health care for our dogs, including annual checkups, parasite prevention, vaccinations and grooming. [...] I can count on my dog 100% to behave in a manner of respect to those around her, be clean and well groomed, have her shots and vaccinations up to date and not cause any problems for others at the airport, in flight or at our destination. [...] You will not get fleas from her [...]."

—response 98, from the May 22, 2018 "Flight Access Survey Report" on p. 134 of our Handbook

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§8.c.iv. DOT's cost analysis in a vacuum ignores our actual survey data showing extreme burdens

In the NPRM, DOT wrote that:

"Airlines also argue that providing animal health information is not burdensome as most, if not all, States and localities already require that animals be vaccinated."

—6464, NPRM

We addressed this in §8.a. We'll quickly recap what we've written there and elsewhere.

While there are vaccination or vaccination-adjacent requirements in most places, DOT is not proposing simply to allow airlines to require that service animal users follow local vaccination rules. DOT is proposing to let airlines require service animals users to make special visits or pay special fees to get third parties to complete a special form for their animal.

All of these new burdens that are built into the requirements are *on top of* normal veterinary care. It makes no sense to act as if these are not extra burdens when those forced to suffer them have made clear that they are—and that they seriously reduce access.

To understand the extent of the burdens and the resulting reduced access, we'll first look at the theoretical cost analysis DOT provides. Then, we'll contrast this with the practical costs illuminated by our 2018 Flight Access Survey Report (p. 73—

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194 of our Handbook), in which 926 service animal users participated.

DOT must look at the thorny, real-world data—not rely on rosy estimates that are out of touch with the lives of the marginalized people pricked by the burdens.

In DOT's estimation, only the time to retrieve, read, and complete the veterinarian form has a cost. This valuation relies on the false assumptions that (A) service animal users will not need to schedule a special visit for the form and (B) veterinarian offices provide special services that take extra time at no extra charge.

Assumption (A) is false for two main reasons.

First, service animals users, like other travelers, don't always know they'll be traveling (or need special forms to travel) until close to the date of travel. This date of knowledge will rarely align with a regular, annual vet visit.

Second, some professionals require a special visit for a form-related evaluation. This means that even if the stars align between the dates of the trip and of the regular vet visit, the service animal user may have to schedule an additional visit anyway.

Assumption (B) is false for transparent reasons. Most professionals charge for their time or services. Taking more time for an extra service from a veterinarian costs service animal users extra money.

DOT estimates the cost to procure the vet form only in terms of the completion of the form: 0.25 hours per form at \$26.48/hour for the veterinarian office's time, for 281,000 passengers, for a total of \$1,860,220. (6474)

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It is certainly the case that some service animal users will be able to have their veterinarians complete the form at no charge and for negligible time. In our actual survey of service animal users, 62 of 882, or 7% indicated they expected zero cost for vet form completion.

However, the mean expected cost—including that 7%—was \$114.90 (see p. 105–106 of our Handbook). This is *not* a cost DOT can ignore.



Further, service animal users' time is valuable as well. Not only would it take service animal users a mean of 8.3 days to get in to obtain a health certificate (including those who said it would take no time), it would take a mean of 6.3 hours, including travel, wait time, and appointment time. The median time is 3 hours, but we are not at liberty to ignore those in rural areas for

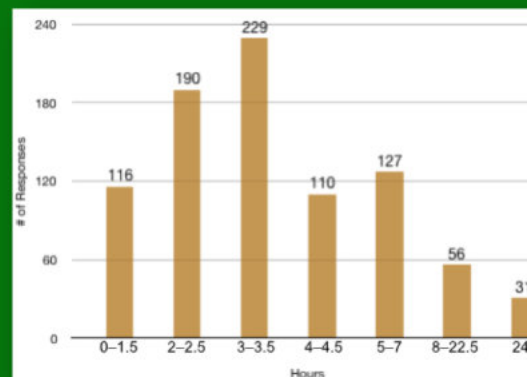
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whom a veterinary trip may take 24 hours. See p. 106–108 in our Handbook.

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865 responses

Mean:

6.3 h

Median:

3 h

(from p. 107–108 of our Handbook)



www.psych.dog

Using the numbers DOT employed in valuing a service animal user's time for the other forms (6474), 6.3 hours of a service animal user's time at \$15.42/hour is \$97.15 per service animal user. With 281,000 service animal users, this value is \$27,298,026.

Similarly, the direct cost to service animal users, charged by veterinarians, also matters. With 281,000 service animal users having to pay an average of \$114.90 per form, the value is \$32,286,900.

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"If respondents had to get veterinary records or a health certificate before flying, they estimate it would cost \$115, take 8 days total, and take 6 hours of personal time"

—from the May 22, 2018 "Flight Access Survey Report" on p. 85 of our Handbook

Service animal users' time and direct costs total to \$59,584,926. That's almost \$60 million in value that DOT overlooked, all falling forcefully on the supposedly Atlantean shoulders of disabled service animal users.

We shared our survey results with DOT in 2018. Consequently, we do not understand why DOT would make the false assumptions required to ignore the worth of service animal users in considering the burdens of the proposed vet form.

<https://www.regulations.gov/document?D=DOT-OST-2018-0067-0020>

In isolation, these numbers distract from the fact that burdens on disabled people stop them from traveling—whether these are existing burdens, replacement burdens, or totally novel burdens. Especially when people have to travel with short notice, third-party documentation requirements can mean a death sentence for those travel plans.

In our 2016 third-party documentation survey report (p. 53–72 of our Handbook), we found that over three out of four people surveyed have either not flown or have flown less because of the burdens associated with third-party documentation. This is the undeniably regressive result of burden-based thinking, as opposed to choosing access-prioritized thinking.

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"It discourages me from flying because it's so much extra work and hassle."

—response 382, from the May 22, 2018 "Flight Access Survey Report" on p. 191 of our Handbook

We have shown there is nowhere near sufficient reason to burden service animal users with the vet form. As part of this, we showed that the health-related concerns the form is purportedly intended to address do not have a solid foundation in any data.

We believe forcing disabled people to provide health-related documentation of any kind for their service animals is not only an unnecessary burden, but is simply unhelpful. Allowing airlines to require the vet form would therefore be immoral—a trepanation on disabled people in an attempt to cure the airlines' faint headache.

With that *firmly* and incontrovertibly in mind, if DOT somehow feels the need to let airlines require health-related documentation for service animals, we do not want DOT's only option to be the proposed vet form. While the most just and reasonable option is to have no such documentation requirement allowed, we will outline a requirement that would be the lesser of two evils, if not the least.

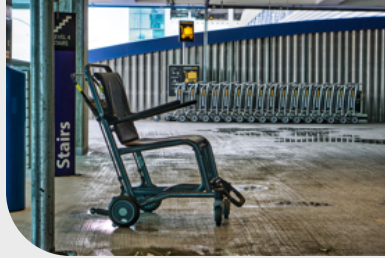
The health documentation must not require active completion by a third party. We've shown that the documentation-related burdens are largely associated with this aspect of the vet form, since it requires extra visits and/or fees.

For as much as it's worth, service animals users could instead carry any documentation from a veterinarian as may be useful if a concern arises, such as a dog bite or a suspicion of ill health that is preventable via normal veterinary treatment. Titer

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results, rather than standard vaccination protocols, would certainly be acceptable under this paradigm.

However, under this lesser-of-two-evils thought experiment, airlines should only be allowed to require a passenger to produce such documentation if there is an unusual occasion in which health documentation would actually assist in sorting out the issue. In other words, it cannot be required by default.

This brings us back to what we said during the Reg Neg. If there were a rare issue and someone did not have vet paperwork of the useful kind with them, the person's veterinarian could be contacted to provide needed information.

Ultimately, this means that there is no need to force disabled people to carry the health information.

A pertinent reminder is that animal control or other emergency response officials are the ones who are supposed to handle situations involving dog bites, not the airline. This means that the most an airline should do is encourage service animal users to carry documentation as may be needed in case it is required in another locality due to an incident.

Exploring this lesser-of-two-evils approach leads us full-circle to our main point. Allowing airlines to require the vet form creates an enormous burden that slashes access for disabled people, which is the total inversion of the point of the ACAA.

This enormous burden, like its predecessor, is set to leave a moral stain on our nation's soul because it doesn't even achieve any purported objectives and there was never even any evidence that would suggest it as an effective solution for DOT's concerns. It would be so easy to recognize the burden of proof, rely only on relevant data, and prioritize the purpose of the ACAA in facilitating access.

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It would be so easy to avoid crushing burdens on disabled people through requirements that are neither necessary nor effective. We still believe DOT can do the right thing and not treat this like a rug bazaar deal to be struck among parties with interests and solutions of equal priority.

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§8.c.v. We must not pretend IDs would help or that fraud could ever reach zero

DOT, airlines, the general public, and service animal users have expressed concerns about the proliferation of services that rubber-stamp third-party documentation.

Requiring an outsider's validation means it is likely businesses will rise to meet the need for all who can pay the fee. Whether they are in-person or website-based, we maintain that concern when it comes to veterinary forms.

Foreswearing technology would be shortsighted. More broadly, it is simply wrongheaded to think there is any way to entirely eliminate fraud. It is even more wrong to prioritize fraud elimination over access for disabled people.

We hope DOT will see that encouraging airlines to require an outsider's stamp of approval for disability-related access poured gasoline on the embers of fraud. Now that the fraudster fire roars in our minds (due to anecdotal tales), DOT is looking to stop the flow of gasoline but perhaps replace it with kerosene.

We do not believe in exchanging one form of third-party approval for another. It is a shell game we are all destined to lose.

Accept that there will be some fraud. Minimize ignorance. Maximize access.

DOT asked whether DOT should allow "airlines to require passengers traveling with a service animals to provide photo identification of the service animal as an additional measure to verify a service animal's identity" (6467). This is an awkward cousin of third-party documentation, and it, too, would not make sense.

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While several businesses would love to corner a service dog ID market—were DOT to prop one up—there is no central service dog ID source. Existing IDs are not meaningful, nor should they be ascribed meaning for access.

Service dog programs provide IDs to graduates as a way to increase pride in, confidence about, and affection toward the program. Many people can produce a professional-looking ID through their local copy shop if they mistakenly believe they need an ID and don't want to pay as much to an online retailer.

Whether an ID is from the best service dog program or the worst scam, the behavior is what matters—not one's belongings, like an ID. Unfortunately, many employees fall into treating IDs as free passes for bad behavior.

IDs do not train an animal, nor do they stop animals that were initially well-trained from losing that training. IDs are a distraction from practical observation, and this distraction creates a less safe environment for everyone.

No matter what, there will be some fraud. The bizarre kind of fraud DOT appears to be insinuating (on 6467) is one in which someone takes a well-behaved dog to a veterinarian, has a form filled out, then flies with a different, poorly-behaved or unhealthy dog. Yes, it is conceivable that this could happen one or two times in all of our future history.

However, someone willing to go to such an extreme would be just as willing to forge documents or IDs. This means that if DOT were to allow airlines to force all service dog users to obtain IDs, it would be a ridiculously pointless burden. It would stop no fraud, as its objective would be, yet it would stop some disabled people from flying.

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- Employees give the next disabled service dog user a hard time when the one before used an ID
- Has no legal meaning in the US (no recognized registry/certification)
- Forcing disability-related paperwork for normal access violates human rights
- Employees often (wrongly) treat service dog documentation as a free pass for bad behavior
- Service dog or not, dogs should be removed if they are aggressive or persist with bad behavior

service dog IDs
are the
wrong answer

**(use non-ID
law cards
instead!)**

Behavior, not belongings
www.psych.dog



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**DO NOT
BLOCK**

§8.c.vi. The ineffective, unnecessary, and burden-based approach must change

We do not dispute that the burdens of third-party documentation may have well-intentioned purposes. But good intentions can seep below being worthless in light of their effects. Paternalistic excuses have a long history of being used to justify atrocious acts of discrimination, further tearing marginalized individuals from the fabric of society.

So we must consider whether extra burdens on disabled people are justified—burdening people merely for the sake of burdening them would be cruel.

"Burden stacking" is what we called it when airlines started requiring multiple pieces of third-party documentation and DOT allowed it. "Burden switching" is changing one kind of ill-favored third-party documentation for another.

Burden stacking against disabled people is a moral stain, but that doesn't mean burden switching is clean by comparison.

This is DOT's opportunity for redemption. Yes, we've shown time and again just how problematic all the third-party documentation proposals are. But they are also demonstrably ineffective and unnecessary, and what's more, without anything close to sufficient evidentiary justification.

Third-party documentation proposals are not ripe for trial and error—they're all the rotten fruit of a spoiled tree. What's wrong is not so much in the offenses of the particulars as it is in the burden-based approach itself.

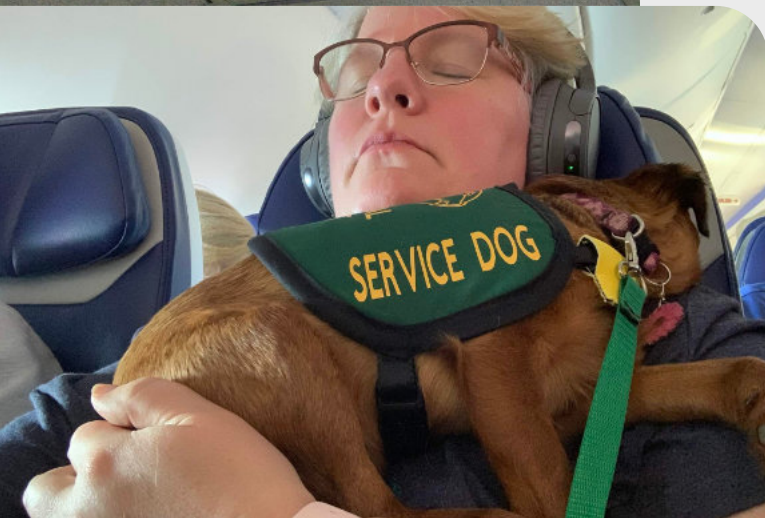
The burden-based approach relies on red herrings and sophistry to distract us from the fundamental aim of disability rights laws. The approach vexingly assumes the next iteration

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of burdens—always the next—will beat the fraud, while forgetting the priority is not to create barriers but to knock them down.

We are all for ensuring the safety of people with disabilities, airline and airport employees, and the general public.

However, when there is zero evidence or sufficient reason to believe that a particular requirement would be helpful toward this goal, throwing excess regulation into the public sphere is not an appropriate reaction. This applies whether we're committed to deregulation or not.

DOT must not be dragged down by the old patterns of burden-based reasoning, nor impoverish the lives of disabled people through this burden-based approach. It is time to evolve into dignity.

Not only is the present third-party documentation proposal ineffective and unnecessary for its aims, but DOT's path forward cannot honorably be through third-party documentation.

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§8.d. If early and lobby check-in were allowed, the language needs much more caution to reduce harassment

We are against allowing airlines to force disabled people to check in either before non-disabled people or in a manner non-disabled people do not have to (such as in the lobby, rather than online). We leave it to other disability rights groups to articulate this inequity, save for reminding DOT of its 2018 finding on p. 10–11 in the Interim Statement of Enforcement Priorities that forced lobby check-in is discriminatory:

"DOT prohibits airlines from denying an individual with a disability the benefit of any air transportation or related services that are available to other persons. [...] For these reasons, and considering the prohibition against discrimination in the ACAA, the Enforcement Office intends to act should an airline require that a passenger with a service animal check-in at the ticket counter, thereby denying those passengers the same benefits that are available to other passengers."

<https://www.regulations.gov/document?D=DOT-OST-2018-0067-0001>

Below we focus on acute concerns of ours in the event some version of the early check-in requirement survives in the final rule. These concerns involve details of language in the regulation proposed on 6475, so we begin by quoting the proposed 14 CFR §382.76 for reference.

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"§ 382.76 May a carrier require a service animal user to check-in at the airport one hour before the check-in time at the airport for the general public as a condition of travel to allow time to process the service animal documentation?

(a) You may require a passenger with a disability to check-in at the airport one hour before the check-in time at the airport for the general public as a condition of travel with a service animal to allow time to process the service animal documentation and observe the animal so long as:

(1) You designate a specific location at the airport where the passenger could be promptly checked-in, the passenger's service animal would be observed, and the passenger's service animal documentation would be promptly reviewed by personnel trained to proficiency on the service animal requirements of this Part; and

(2) You have a similar or more stringent check-in requirement for passengers traveling with their pets in the cabin.

(b) If a passenger does not meet the check-in requirements you establish consistent with this section, you must still provide the accommodation if you can do so by making reasonable efforts, without delaying the flight."

—6475, NPRM

First, there is a simple matter of whether "the check-in time" DOT refers to is the latest time one may check in or the opening of the check-in time.

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We believe DOT means the latest check-in time, because otherwise service animal users would have to check in multiple hours before the time others have to, and airlines are often not set up to check in passengers before the usual opening time for check-in.

It only takes one word in (a), "latest", to clarify this so neither airline employees nor passengers become confused. This would be as follows: "(a) You may require a passenger with a disability to check in at the airport one hour before the *latest* check-in time at the airport for the general public [...]" (italics added here for clarity).

Here and in other updates, we suggest altering any verbal form of "check-in" to "check in" without the hyphen. Compare, for example, "I check in" with "My check-in".

The proposed §382.76(a)(1) indicates that for an airline to require a service animal user to check in earlier than others, the airline must designate a special area for prompt check-in, observation, and documentation review. What qualifies as a prompt check-in is subjective.

We strongly advise DOT to include more information to minimize the possibility of airline personnel unduly detaining service animal users for gratuitous observation.

There is a lot of prejudice/ableism in the world—especially against people with non-apparent disabilities. We worry that airline employees would feel entitled to hold service animal users for indefinite periods of time and be placed under unreasonable scrutiny, to the point of harassment. DOT must not allow airline employees to lean on §382.76 as an excuse if this occurs.

We offer the following as an example of a revision that might account for these considerations:

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Uniform first-party documentation can educate, third-party is a pointless burden



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"(1) You designate a specific location at the airport where the passenger could be promptly checked in, the passenger's service animal documentation would be promptly reviewed by personnel trained to proficiency on the service animal requirements of this Part, and the passenger's service animal would be observed without detaining the passenger for longer than the duration of the check-in and documentation review; and"

(our revision of the proposed §382.76(a)(1))

We strongly believe that without some kind of safeguard, the regulation as proposed would lead to over-zealous "observations" that would create serious, headline-grabbing disability rights violations.

We have a final concern that arises if airlines are allowed to force service animal users to check in early.

If an airline connects seat assignments with check-in times, requiring service animal users to check in at the airport can be a severe disadvantage when competing with those allowed to check in online earlier. In such cases, it makes sense for airlines to override such seat assignments to accommodate disadvantaged service animal users.

DOT should account for this with something like the following addition to 14 CFR §382.76:

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"(c) If you require early check-in under (a) for service animal users, allow earlier check-in online or otherwise for other passengers, and you connect seating assignments to check-in times, you must make accommodations so that service animal users are not disadvantaged by not being allowed to check in as early as other passengers."

(our addition to the proposed §382.76)

This update calls to mind an issue DOT has not covered in the NPRM. Airlines have increasingly divided seating areas into finer-grained classes of service. This enables them to skirt the access-based intent of the regulations that allow service animal users to be accommodated in either bulkhead or non-bulkhead seats, according to preference (see 14 CFR §382.81(c) and 87(f)).

Classes of service are no longer a simple binary choice between first-class and coach, each with its own bulkhead. We implore DOT to reconsider and modernize the regulations to suit the times. Details are in our Handbook on p. 234–237.

Similarly, since 2017 we have been urging DOT to address the lack of clarity when it comes to disability accommodations within "basic economy" seating. Please see p. 237–240 in our Handbook for details, and please provide guidance on this.

Our survey showed that service animal users are avoiding this more affordable class of service due to unnecessary confusion. Lack of guidance from DOT has so far led to de facto discrimination.



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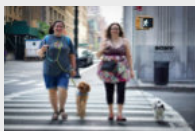


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§9. Disabled passengers booking codeshare flights deserve accommodation clarity

Earlier, we argued for our ideal when it comes to this topic. For more information, see p. 280–283 of our attached Handbook ("The path to responsible air travel governance: A recent history of service animal recommendations", May 2019).

DOT indicates that the NPRM proposal eliminates worry about potential conflicts between what US airlines are held accountable for and what their foreign codeshare partners are accountable for, because the proposal is to limit service animal species to dogs so there would be no difference in species-related requirements. However, we have given strong reasons to maintain access for users of miniature horse service animals in the future.

It would not be inordinately difficult for the access protocol for service mini-horses to involve a warning about the possibility of accommodations not extending to instances of travel from one foreign point to another. Similarly, DOT could update 14 CFR §382.7(c) to clarify whether US airlines would be responsible for foreign codeshare partners' actions in these instances.

Not everyone is an experienced traveler who understands all the fine print. This means that a reasonable person may not understand that the rules switch from their booked airline's to a codeshare partner's. All many people would think is that they have a flight with a US airline to a foreign city with a layover.

So our main concern is that US airlines that offer such flights must make the situation abundantly clear to the relevant passengers when offering the flights. It would be wrong for a disabled person to expect an accommodation because they

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book through a US airline, but then they arrive in a foreign country and are unexpectedly unable to continue the next segment within their booked journey to reach their destination.

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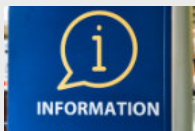


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If there were one guiding beacon we could shine to aid DOT's navigation, it would be this. Disability rights law must fundamentally prioritize access.

Please do not be distracted from that principle—especially by the Sirens of sweet-sounding solutions that do nothing but wreck disabled people on the rocks.